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EXAMINER

DEXTER, CLARK F

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 12/04/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/738,234

Applicant(s)

Roberts et al.

Examiner

Clark F. Dexter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on Sep 19, 2001

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 26-40 is/are pending in the application.

4a) Of the above, claim(s) 32-40 is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 26-31 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4

20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Applicant's election with traverse of Group III in the response filed September 19, 2001 (paper no. 9) is acknowledged. The traversal is on the ground(s) that the "restriction requirement is improper at least in regard to the separation of Groups II thru IV, product claims 26-32." This is found persuasive-in-part.

Upon further consideration, Groups II and III have been rejoined because they are considered to be directed to substantially the same invention (i.e., subcombination); specifically, the housing/counter configuration of the dispenser structure.

The Examiner respectfully maintains the position that Group IV is directed to a patentably distinct subcombination with respect to group II/III (i.e., combined groups II and III). The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, the housing/counter configuration of group II/III could be employed without the electronic means of group IV, and conversely, the electronic means could be employed without the specific housing/counter configuration of group II/III. See MPEP § 806.05(d). However, if applicant believes that these or others of the groups are not directed to distinct inventions, applicant may identify which groups are not patentably distinct and claims directed to these groups will be examined together. It is noted, however, that such a statement may be used as an

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admission of obviousness and may be used in a rejection under 35 USC 103 (a) to reject all of the identified groups of inventions over prior art that meets one of the groups.

Regarding claim 40, this claim is directed to a combination and forms a new group VIII and thus has been withdrawn from consideration. Group VIII is independent and distinct from Groups I and V-VII for the same reasons given for Groups II/III and IV (it is noted that the claim of Group I has been canceled). Further, Group VIII is independent and distinct from the subcombinations of Groups II/III and IV as follows:

The invention of group VIII is related to the inventions of groups II/III and IV as combination and subcombination. Inventions in this relationship are distinct if there is evidence that the combination does not rely on the subcombination for patentability. See MPEP 806.05 (c), example 3. Group IV is evidence that the combination of group VIII does not rely on the housing/counter configuration of the dispenser structure of group II/III for patentability; and conversely, group II/III is evidence that the combination of group VIII does not rely on the electronic means of group IV for patentability.

The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

2. The information disclosure statement filed December 15, 2000 (paper no. 4) has been received and the references listed thereon have been considered.

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***Oath/Declaration***

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the post office address of each inventor. A post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The post office address should include the ZIP Code designation.

***Abstract***

4. The abstract of the disclosure is objected to because of the following informalities: 

In line 3, "the dispenser" should read --a lottery ticket dispenser-- or the like for clarity; in lines 4-5, "top of the housing" is unclear, and it seems that it should read --dispenser includes a housing, the top of which-- or the like.

Appropriate correction is required.

***Specification***

5. The disclosure is objected to because of the following informalities:

On page 7, line 20, "34" is improper since it has already been used to represent another feature (see page 6, line 19).

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On page 8, lines 1-2, the recitation “an edge of the cover 30 overlies the front edge of the cover 34” is unclear as to what is being set forth, particularly in view of Figure 1, and appears to be inaccurate; in line 4, “rear” appears to be inaccurate (particularly since it is on the front cover), and it seems that it should be changed to --front-- or the like.

On page 11, line 20, “another section 176” is unclear, particularly in view of lines 23-24, and it is suggested to change “another section 176” to --an insert 176 forming another section-- or the like.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claims 26-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26, line 3, “front wall”, “rear wall” and “top wall” are vague and indefinite as to what disclosed structure these terms refer, and it is suggested to add these terms to the specification or the like; also in line 3, it seems that the first occurrence of “and” should be changed to a comma --,-- or the like for clarity; in line 11, “a transparent front wall portion” is vague and indefinite as to whether it refers to the front wall recited in line 3 or to another such wall; in line 12, “a rear wall portion” is vague and indefinite as to whether it refers to the front

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wall recited in line 3 or to another such wall; in line 15, it seems that the first occurrence of "and" should be deleted or the like for clarity.

In claim 28, line 2, "countertop" lacks positive antecedent basis, particularly with respect to the occurrence of "counter top" in claim 26, line 5, and it seems that all of the occurrences should be consistent (i.e., either one word or two words).

In claim 30, lines 1-2, the recitation "said transparent front wall portion is hingedly coupled to said housing" is vague and indefinite since it is not clear how the front wall portion can be part of and hingedly coupled to the housing; in line 4, "hingedly coupled" is vague and indefinite as to what the rear wall is hingedly coupled.

In claim 31, line 3, "including" is vague and indefinite as to what it refers (i.e., it is not clear as to what includes the guide means); also in line 3, "guide means" is vague and indefinite as to what disclosed structure it refers.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent

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any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 26-31, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer, pn 5,492,398.

Schafer discloses a dispensing structure with almost every structural limitation of the claimed invention but lacks a counter having a counter top. However, the Examiner takes Official notice that it is old and well known to provide counter tops for supporting dispensing devices for various known benefits including displaying and/or facilitating access to the dispensing device. Therefore, it would have been obvious to one having ordinary skill in the art to provide a counter having a counter top and providing the dispensing device adjacent thereto (e.g., on the counter top) for supporting the dispensing device of Schafer for the well known benefits including those described above.

Regarding claim 28, Schafer lacks the specifics of the counter top and the relationship between the counter top and the dispenser housing. However, the Examiner takes Official notice that it is old and well known in the art to provide rails on counter tops for various known benefits including preventing items from falling off the counter top. Further, the Examiner takes Official notice that it is known in the art to provide dispenser housings with protruding portions for facilitating access to a dispensing device. Therefore, it would have been obvious to one having ordinary skill in the art to provide claimed specifics of the counter top and the relationship



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between the counter top and the dispenser housing for the well known benefits including those described above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Monday, Tuesday, Thursday and Friday, and he can be reached during normal business hours on these days.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3579; informal/draft papers - (703)305-9835.



**Clark F. Dexter**  
**Primary Examiner**  
**Art Unit 3724**

cf  
November 30, 2001